

ORDINANCE NO. 2009-025

AN ORDINANCE OF THE BOARD OF COUNTY
COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA.
AMENDING SECTIONS 2-80.41 THROUGH 2-80.48 OF THE
PALM BEACH COUNTY CODE, WHICH CODIFIED
ORDINANCE 02-065 ESTABLISHING A "LOCAL
PREFERENCE IN PURCHASING ORDINANCE";
PROVIDING FOR A TITLE; PROVIDING FOR
DEFINITIONS; PROVIDING FOR A RECIPROCAL
PREFERENCE FOR LOCAL BUSINESSES; PROVIDING
FOR A STRAIGHT PREFERENCE FOR LOCAL
BUSINESSES; PROVIDING FOR A STRAIGHT
PREFERENCE FOR GLADES BUSINESSES; PROVIDING
FOR A STRAIGHT PREFERENCE FOR THE USE OF
GLADES SUBCONTRACTORS BY LOCAL BUSINESSES;
PROVIDING FOR LIMITATIONS; PROVIDING FOR
REPEAL OF LAWS IN CONFLICT; PROVIDING FOR
SEVERABILITY; PROVIDING FOR INCLUSION IN THE
CODE OF LAWS AND ORDINANCES; AND PROVIDING
FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Palm Beach County, Florida enacted Ordinance No. 02-065 which established a local preference for the procurement of goods, services, and the construction of public works projects; and

WHEREAS, Palm Beach County now recognizes that businesses in the Glades have unique geographic and economic issues that make a countywide local preference ineffective in terms of addressing the needs of businesses located in the Glades; and

WHEREAS, Palm Beach County desires to establish a preference for businesses and subcontractors located in the Glades when the goods, services, or construction will be utilized or built within the Glades; and

WHEREAS, Palm Beach County now recognizes that on construction for public works projects where subcontractors may represent up to 90% of the work awarded in a contract, that a preference should be applied when local or Glades subcontractors are utilized by local businesses; and

WHEREAS, the Board of County Commissioners further believes that such preferences will stimulate the Glades economy, attract new businesses and industry, and create a demand for jobs to provide such goods, services and construction; and

WHEREAS, the provisions of this Ordinance shall apply only to funds expended by Palm Beach County to procure goods, services and to construct public improvements, where permitted by law; and

1 **WHEREAS**, the Board of County Commissioners has deemed it necessary to amend the
2 current Local Preference in Purchasing Ordinance in order to further facilitate and enhance the
3 efficiency of the County's procurement process.

4 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
5 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA**, that:

6 **Section 1. TITLE:**

7 This Ordinance shall be entitled the Palm Beach County Local Preference Ordinance.

8 **Section 2. DEFINITIONS:**

9 **Sec. 2-80.42 of the Palm Beach County Code is hereby amended as follows:**

10 (a) “Glades” means the area from the Broward County line north along Canal L-36 to
11 the Loxahatchee National Wildlife Refuge, thence north to Southern Boulevard along Canal L-40,
12 thence west along Southern Boulevard to a north-south line 1 1/2 miles west of Canal L-8, which
13 coincides with a private agricultural road heading north from Southern Boulevard at that point
14 where State Road 880 intersects Southern Boulevard from the South, thence north along the line of
15 this north-south road to the boundary of the J.W. Corbett Wildlife Management Area, thence east
16 and north along the boundary of the J.W. Corbett Wildlife Management Area to the Martin County
17 line.

18 (b) “Glades business” means a bidder or proposer which has a permanent place of
19 business within the Glades and which holds a business tax receipt issued by Palm Beach County
20 that authorizes the bidder or proposer to provide the goods, services, or construction to be built and
21 which is issued prior to the issuance of the invitation for bids/request for proposals for which a
22 preference is sought. If the business is a joint venture/partnership, it is sufficient for qualification
23 as a Glades business if at least one of the joint venturers/partners meets the requirements set forth
24 in this subsection.

25 (c) “Glades subcontractor” means a subcontractor participating in a bid or proposal for
26 goods, services or construction which has a permanent place of business within the Glades and
27 which holds a business tax receipt issued by Palm Beach County that authorizes the Glades
28 subcontractor to provide goods, services or construction services and which is issued prior to the
29 issuance of the invitation for bids/request for proposals for which a preference is sought. If the
30 subcontractor is a joint venture/partnership, it is sufficient for qualification as a Glades

1 subcontractor if at least one of the joint venturers/partners meets the requirements set forth in this
2 section.

3 (d) "Local business" means a bidder or proposer which has a permanent place of
4 business within Palm Beach County and which holds a business tax receipt issued by Palm Beach
5 County that authorizes the bidder or proposer to provide the goods, services, or construction to be
6 purchased and which is issued prior to the issuance of the invitation for bids/request for proposals
7 for which a preference is sought. If the business is a joint venture/partnership, it is sufficient for
8 qualification as a local business if at least one of the joint venturers/partners meets the test set forth
9 in this section.

10 (e) "Non-local business" means a bidder or proposer which is not a local business or a
11 regional business as defined herein.

12 (f) "Permanent place of business" means headquarters which are located within Palm
13 Beach County or within the Glades for Glades businesses, or a permanent office or other site
14 located within Palm Beach County or within the Glades for Glades businesses, from which a bidder
15 or proposer will produce a substantial portion of the goods or perform a substantial portion of the
16 services to be purchased and which was in existence prior to the issuance of the invitation for
17 bids/request for proposals. A post office box or location at a postal service center shall not
18 constitute a permanent place of business.

19 (g) "Regional business" means a business which does not have a permanent place of
20 business within Palm Beach County and which is domiciled within Broward, Martin, or Miami-
21 Dade County for purposes of receiving a regional business preference from Broward, Martin, or
22 Miami-Dade County.

23 (h) "Regional business preference" means any policy, program, rule, regulation or
24 practice of Broward, Martin or Miami-Dade County which grants any business a preference of any
25 amount or percentage based on its location in that jurisdiction in relation to other bidders or
26 proposers.

27 All other terms and definitions used herein shall have the same meaning as set forth in the
28 Purchasing Ordinance, as it may be amended.

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30

1 **Section 3. RECIPROCAL PREFERENCE FOR LOCAL BUSINESSES:**

2 **Sec. 2-80.43 of the Palm Beach County Code is hereby amended as follows:**

3
4 In the event the lowest responsive, responsible bidder or the highest ranked responsive,
5 responsible proposer in the procurement of goods, services or the construction of public works
6 projects is a regional business, and the regional business is from a jurisdiction which applies a
7 regional business preference against Palm Beach County businesses, the bids or proposals of all
8 local businesses may be adjusted by five percent (5%), solely for the purpose of determining bid or
9 proposal award. The bid price of local bidders businesses will be adjusted downward by five
10 percent (5%) for purposes of ranking bidders. The proposal scores of local proposers businesses
11 will be adjusted upward by five percent (5%) for purposes of ranking proposers. In no event,
12 however, shall the application of this adjustment change the actual bid or proposal amount.

13 The determination as to whether a bidder or proposer is a local or regional business shall be
14 made by County staff based upon documentation submitted by the local and regional bidder or
15 proposer at the time of bid or proposal submission and pursuant to this Ordinance and to any rules
16 and regulations promulgated by the Purchasing Department. County staff may require a bidder or
17 proposer to provide additional information at any time prior to the award of the contract.

18 **Section 4. STRAIGHT PREFERENCE FOR LOCAL BUSINESSES:**

19 **Sec. 2-80.44 of the Palm Beach County Code is hereby amended as follows:**

20 In the event the lowest responsive, responsible bidder or the highest ranked responsive,
21 responsible proposer in the procurement of goods, services or the construction of public works
22 projects is a non-local business, the bids or proposals of all responsive, responsible local businesses
23 may be adjusted by five percent (5%), solely for the purpose of determining bid award. The bid
24 price of local businesses will be adjusted downward by five percent (5%) for purposes of ranking
25 bidders. The proposal score of local businesses will be adjusted upward by five percent (5%) for
26 purposes of ranking proposers. In no event, however, shall the application of this adjustment
27 change the actual bid amount.

28 The determination as to whether a bidder or proposer is a local or non-local business shall
29 be made by County staff based upon documentation submitted by the local and regional bidder or
30 proposer at the time of bid or proposal submission and pursuant to this Ordinance and to any rules
31 and regulations promulgated by the Purchasing Department. County staff may require a bidder or
32 proposer to provide additional information at any time prior to the award of the contract.

1 **Section 5. STRAIGHT PREFERENCE FOR GLADES BUSINESSES:**

2 For any good or service to be utilized in the Glades and for any construction project located
3 in the Glades, the straight preference described in this Section shall be applied in lieu of the
4 reciprocal preference described in Section 3 herein and the straight preference described in Section
5 4. In the event the lowest responsive, responsible bidder or the highest ranked responsive,
6 responsible proposer in the procurement of goods, services or the construction of public works
7 projects is a non-Glades business, the bids or proposals of all responsive, responsible Glades
8 businesses may be adjusted by five percent (5%), solely for the purpose of determining bid award.
9 The bid price of all responsive, responsible Glades businesses will be adjusted downward by five
10 percent (5%) for purposes of ranking bidders. The proposal score of all responsive, responsible
11 Glades businesses will be adjusted upward by five percent (5%) for purposes of ranking proposers.
12 In no event, however, shall the application of this adjustment change the actual bid amount. A
13 local business which is not a Glades business, but which utilizes Glades subcontractors may be
14 eligible for the preference set forth in Section 6 herein.

16 The determination as to whether a bidder or proposer is a Glades or non-Glades business
17 shall be made by County staff based upon documentation submitted by the bidder or proposer at the
18 time of bid or proposal submission and pursuant to this Ordinance and to any rules and regulations
19 promulgated by the Purchasing Department. County staff may require a bidder or proposer to
20 provide additional information at any time prior to the award of the contract.

21 **Section 6. STRAIGHT PREFERENCE FOR USE OF GLADES SUBCONTRACTORS BY**
22 **LOCAL BUSINESSES:**

23 For any good or service to be utilized in the Glades or for any construction project located
24 in the Glades, the straight preference described in this Section shall be applied in lieu of the
25 reciprocal preference described in Section 3 and the straight preference described in Sections 4 and
26 5 of this Ordinance, and cannot be combined with a preference received pursuant to Section 6 of
27 this Ordinance. A bidder or proposer in the procurement of goods, services and construction of
28 public works projects who is a local business but not a Glades business and who utilizes Glades
29 subcontractors for a minimum of 15% of the work may receive a straight local preference of three
30 percent (3%), solely for the purpose of determining bid award. The bid price of local businesses
31 utilizing Glades subcontractors for a minimum of 15% of the work will be adjusted downward by
32 three percent (3%) for purposes of ranking bidders. The proposal score of local businesses utilizing

1 Glades subcontractors for a minimum of 15% of the work will be adjusted upward by three percent
2 (3%) for purposes of ranking proposers. In no event, however, shall the application of this
3 adjustment change the actual bid amount.

4 A bidder or proposer in the procurement of construction of public works projects who is a
5 local business and who utilizes Glades subcontractors for a minimum of 30% of the work may
6 receive a straight local preference of four percent (4%), solely for the purpose of determining bid
7 award. The bid price of local businesses utilizing Glades subcontractors for a minimum of 30% of
8 the work will be adjusted downward by four percent (4%) for purposes of ranking bidders. The
9 proposal score of local businesses utilizing Glades subcontractors for a minimum of 30% of the
10 work will be adjusted upward by four percent (4%) for purposes of ranking proposers. In no event,
11 however, shall the application of this adjustment change the actual bid amount.

12 For the purposes of determining Glades subcontractor participation under this Section, the
13 total of Glades subcontractor participation described below will apply:

14 (1) the local business may count towards its preference only that portion of the total
15 dollar value of a contract performed by a Glades subcontractor;

16 (2) the local business may count towards its preference the entire expenditures for
17 materials and equipment purchased by a Glades subcontractor provided that the Glades
18 subcontractor has the responsibility for the installation of the purchased materials and equipment;

19 (3) the local business may count towards its preference the entire expenditure to a
20 Glades subcontractor who is a manufacturer (i.e., a supplier that produces goods from raw materials
21 or substantially alters the goods before resale);

22 (4) the local business may count towards its preference sixty percent (60%) of its
23 expenditures to Glades subcontractors that supply the material but do not manufacture or
24 substantially alter the material; and

25 (5) the local business may count towards its preference second and third tiered Glades
26 subcontractors, provided that the local business identifies the Glades subcontractors as second and
27 third tier subcontractors in its bid/proposal.

28 The determination as to whether a subcontractor is a Glades subcontractor shall be made by
29 County staff based upon documentation submitted by the local and regional bidder or proposer at
30 the time of bid or proposal submission and pursuant to this Ordinance and any rules and regulations
31 promulgated by the Purchasing Department. County staff may require a bidder or proposer to

1 provide additional information at any time prior to the award of the contract with regard to the
2 subcontractor's place of business when a preference is being applied.

3 **Section 7. LIMITATIONS:**

4 **Sec. 2-80.47 of the Palm Beach County Code is hereby amended as follows:**

5 (a) The provisions of this Ordinance shall apply only to procurements which are above the
6 formal bid threshold as set forth in the Palm Beach County Code.

7 (b) The provisions of this Ordinance shall not apply where prohibited by federal, state or
8 Florida law or where prohibited under the conditions of any grant.

9 (c) The provisions of this Ordinance shall not apply to any purchase exempted from the
10 provisions of the Palm Beach County Purchasing Ordinance.

11 (d) The provisions of this Ordinance shall in no way limit the right of the Board of County
12 Commissioners to compare the quality of the goods and/or services proposed for purchase and the
13 qualifications, character, responsibility and fitness of any person or entity submitting bids or
14 proposals or to make an award it deems to be in the best interest of the County

15 (e) In procurements where price is the only factor for selection, the provisions of this
16 Ordinance shall not be applied where its application would result in an award which exceeds the
17 otherwise lowest responsive, responsible bid by \$100,000.00.

18 (f) The provisions of this Ordinance shall not apply to contracts made under the
19 Consultant's Competitive Negotiation Act (CCNA), Fla. Stat. §287.055, as may be amended from
20 time to time.

21 (g) A local business or a Glades business or a local business utilizing Glades
22 subcontractors receiving a preference under the Palm Beach County Small Business Enterprise
23 Ordinance for a particular purchase shall not be eligible to receive the preferences established in
24 this Ordinance for that same purchase. In case of any conflict between the provisions of this
25 Ordinance and the Small Business Enterprise Ordinance, the Small Business Enterprise Ordinance
26 shall take precedence.

27 (h) Decisions concerning the application of this Ordinance shall be made by the
28 Department of Purchasing pursuant to this Ordinance and any rules and regulations promulgated by
29 the County Administrator or his/her designee and shall be final as to the County provided such
30 decision may be protested pursuant to the protest process set forth in the Purchasing Ordinance.

(i) The provisions of this Ordinance shall not be applied to any procurement where the local nature of a business has been addressed through the scoring criteria.

3 Section 8. REPEAL OF LAWS IN CONFLICT:

4 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
5 repealed to the extent of such conflict.

6 Section 9. SEVERABILITY:

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

10 Section 10. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:

11 The provisions of this Ordinance shall become and be made a part of the Palm Beach
12 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such,
13 and the word "ordinance" may be changed to "section," "article," or other appropriate word.

14 Section 11. EFFECTIVE DATE:

15 The provisions of this Ordinance shall become effective upon filing with the Department of
16 State.

17 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
18 County, Florida, on this the 18th day of August, 2009.

19 SHARON R. BOCK, CLERK &
20 COMPTROLLER

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

By:  John F. Koons

APPROVED AS ~~PERFORM~~
LEGAL SUFFICIENT

By: County Attorney

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, SHARON R. BOCK, Clerk and Comptroller,
certify this to be a true and correct copy of the original
filed in my office on ALLIED INSURANCE 6-17-1999

dated at West Palm Beach, FLORIDA
By: Deputy Clerk 